88-972

No. _____

Supreme Court, U.S.
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CLERK

In The

Supreme Court of the United States

October Term, 1988

WILFREDO MAISONET,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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25 pp

QUESTION PRESENTED

1. Did the Connecticut Courts violate *Davis v. Alaska*, 415 U.S. 308 (1974) by prohibiting a defendant from cross-examining a key prosecution witness concerning whether he expected to receive a specific reduction in his sentence as payment for his testimony?

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STATE OF CONNECTICUT,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

PETITION FOR A WRIT OF CERTIORARI

Wilfredo Maisonet, Petitioner, requests that a writ of certiorari issue to review the judgment and opinion of the Connecticut Appellate Court entered September 6, 1988.

OPINION BELOW

The opinion of the Appellate Court of Connecticut is officially reported at 16 Conn. App. 89 (1988). It is reproduced in the Appendix to this Petition beginning at App. A-1.

A petition for certification was denied by the Connecticut Supreme Court on October 14, 1988. That order is reproduced in the Appendix to this Petition beginning at App. B-1.

JURISDICTION

The judgment of the Connecticut Appellate Court, affirming Petitioner's conviction of sale of narcotics and conspiracy to sell narcotics was entered on September 6, 1988. A timely Petition to certify an appeal was filed with the Connecticut Supreme Court and denied by that Court on October 14, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment to the United States Constitution provides in relevant part: "Nor shall any State deprive any person of life, liberty or property without due process of law. . . ."

2. The Sixth Amendment to the United States Constitution provides in relevant part: "The accused shall

enjoy the right . . . to be confronted with the witnesses against him. . . ."

3. Section 21a-277(a) of the Connecticut General Statutes provides in relevant part as follows: "Any person who . . . distributes, sells . . . dispenses . . . or administers to another person . . . a narcotic substance . . . shall be imprisoned. . . ."

4. Section 53a-8 of the Connecticut General Statutes provides in relevant part as follows: "A person, acting with the mental state required for commission of an offense, who . . . intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct. . . ."

STATEMENT OF THE CASE

The Petitioner, Wilfredo Maisonet, was convicted of sale of a narcotic substance and conspiracy to sell a narcotic substance, in the Connecticut Superior Court at New Haven. Trooper Fernandez of the Connecticut State Police testified that he purchased drugs from one Luiz Colon on February 1, 1985. He testified that this sale took place in the presence of the Petitioner, and he claimed to be able to identify the Petitioner based upon looking at police mug shots in September of 1985. He had not known the Petitioner prior to these events.

Luiz Colon testified as a prosecution witness. He claimed that in making the hand-to-hand sale to Fernandez, he was acting as the agent and employee of the Petitioner. Colon testified on direct examination that he

had pled guilty to crimes carrying a potential maximum penalty of 35 years in prison, but that he had not yet been sentenced. On cross-examination, defense counsel established that Colon hoped to gain consideration on his ultimate sentence by his testimony on behalf of the prosecution against Petitioner. But when Petitioner's attorney asked Colon exactly what sort of sentence he hoped to receive in exchange for this testimony, the Court sustained a prosecution objection and prohibited such inquiry.

The Connecticut Appellate Court, affirming the conviction, held that precluding this line of inquiry did not violate Petitioner's right of confrontation and held further that the ruling was a discretionary one which did not constitute any abuse of the trial Court's discretion. In so holding, the Court expressly declined to follow a prior holding of the Fourth Circuit, *Hoover v. Maryland*, 714 F.2d 301 (4th Cir. 1983), which holds to the contrary.

In his petition for certification, the Petitioner expressly asked the Connecticut Supreme Court to reverse the Appellate Court on the Sixth and Fourteenth Amendment issue here presented, but the Supreme Court of Connecticut denied the Petition without comment.

REASONS FOR GRANTING THE WRIT

The holding of the Connecticut Appellate Court in this case violates the rule established by this Court in *Davis v. Alaska*, 415 U.S. 308 (1974), and is directly contrary to the interpretation of *Davis* followed by the Fourth Circuit in *Hoover v. Maryland*, 714 F.2d 301 (4th Cir. 1983).

Hoover held it was constitutional error to prohibit a defendant from asking a witness how much prison time he thought he would avoid by testifying for the prosecution, basing its holding on this Court's decision in *Davis v. Alaska, supra.* See also, *Stevens v. Bordenkircher,* 746 F.2d 342, 346-47 (6th Cir. 1984).

Cross-examination means nothing if it does not include an exploration of underlying facts from which the cross examiner can later argue to the jury his contentions regarding the bias of the witness. That opportunity was completely denied the Petitioner in this case. And that denial arose in the context of the testimony of the single most important prosecution witness at the trial. The result was that Petitioner was denied any semblance of a fair trial in this action. That denial was based upon a flagrant violation of legal doctrine clearly established by this Court long ago. Thus, certiorari should be granted in this case both because the Connecticut Courts have blatantly refused to follow constitutional doctrine established by this Court and because Connecticut Courts have expressly declined to adopt the interpretation of this Court's holding in that regard which is followed in the Courts of Appeals.

CONCLUSION

For the above reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted:

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No. _____

In The

Supreme Court of the United States

October Term, 1988

WILFREDO MAISONET,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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State of Connecticut v. Wilfredo Maisonet (5465)

Bieluch, Stoughton and Norcott, Js.

Substitute information charging the defendant with the crimes of illegal sale of a narcotic substance and conspiracy to sell a narcotic substance, brought to the Superior Court in the judicial district of New Haven and tried to the jury before *McKeever, J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *No error.*

John R. Williams, for the appellant (defendant).

Leah Hawley, deputy assistant state's attorney, for the appellee (state).

Bieluch, J. The defendant appeals from the judgment of conviction, after a jury trial, of selling a narcotic substance in violation of General Statutes §§ 53a-8 and 21a-277(a), and of conspiracy to sell a narcotic substance in violation of General Statutes §§ 53a-48(a) and 21a-277(a). The defendant claims that the trial court erred (1) in limiting his cross-examination of a prosecution witness, an accomplice, on the questions of whether the witness had been offered a particular sentence in exchange for his testimony and of the witness' expectation regarding the extent of a reduced sentence, (2) in limiting his cross-examination of an undercover police officer concerning a previous misidentification the officer had made of a suspect in an unrelated proceeding, and (3) in denying his attempt to show that his prior record consisted solely of a misdemeanor conviction. We find no error.

The jury could reasonably have found the following facts. On February 1, 1985, Trooper Julio Fernandez, on undercover assignment from the Connecticut state police statewide narcotics task force, entered the Crown Street Market in Meriden, owned by the defendant, and purchased one half gram of cocaine from Luiz Colon and the defendant. Both the defendant and his accomplice, Colon, were arrested and charged with crimes connected to the sale of the cocaine.[1]

At trial, Colon testified for the state regarding the drug transaction and also identified the defendant. During his cross-examination, it was established that Colon was awaiting sentencing on a number of charges and was facing a maximum of thirty-five years in prison. The court thereafter sustained the prosecution's objections to the question whether "there ever [was] a time when you were offered any particular specific sentence," and to the question asking the witness what he thought the "best" for him would be regarding a reduced sentence.

Fernandez testified as to the drug purchase and explained how he had identified the defendant, after the sale, from an array of photographs presented to him by the police. On cross-examination, the defendant attempted to ask Fernandez about a misidentification he alleged Fernandez had made in a previous case involving the use of photographs to identify the suspect. The court

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[1] Colon pleaded guilty to selling narcotics in connection with the transaction involved in this case, as well as to a charge involving another narcotics transaction, and to a violation of probation. At the time of this trial, Colon had not yet been sentenced on these charges.

also prohibited this witness, upon the state's objection, from answering whether he was aware that, in a previous unrelated case, he had claimed to have purchased narcotics from an individual who was actually serving time in prison at the time of that alleged sale.

At another point in the trial, the state introduced a display of eight photographs as an exhibit and asked Fernandez to indicate whether he recognized them. He acknowledged that the photographs were the ones he had examined for the police after the narcotics purchase, and identified the defendant's photograph as the one he had previously selected as being the individual from whom he had purchased the cocaine. On direct examination of the defendant later in the trial, the defendant was asked the nature of his prior conviction. The state objected on the ground of immateriality. The court sustained the objection, to which the defendant excepted, after claiming that the jury should know that he had been convicted only of a misdemeanor because "the jurors, whether they are told to or not, often speculate about the origin of that photograph."

I

The defendant first claims that the trial court erred when it would not allow Colon to testify as to whether the state had promised him a "particular specific sentence" for his testimony against the defendant, or as to the reduction in sentence he expected to receive.[2] The defendant argues that such testimony should have been

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[2] The transcript indicates the following exchange occurred:

(Continued on following page)

(Continued from previous page)

"Q. So you have a total possible pending sentence against you right now of 35 years?

"A. Yes, sir.

"Q. Now, you made a deal with them or no deal, is that what you are saying?

"A. No deals.

"Q. You are just sitting there hoping somebody will cut you a break?

"A. Yes, sir.

"Q. Was there ever a time when you were offered any particular specific sentence?

"A. No, sir.

"Mr. Hadden: I will object to that.

"The Court: Sustained.

"Mr. Van Kirk: Well, the grounds for the objection weren't stated.

"Mr. Hadden: Clearly not relevant, your Honor, to anything he has testified to as to what he has pled guilty to and what the arrangement is with the court and anything that was discussed prior to that time is totally irrelevant.

"Mr. Van Kirk: Well, perhaps maybe I could do it in a little different way that would make it seen more relevant. I will rephrase the question.

"Q. What do you expect from this?

"A. The best for me.

"Q. The best for you. What do you think the best for you is?

"Mr. Hadden: I object. What he perceives the best he can get, I don't know whether that has any relevance to this man's testimony.

"The Court: Well, I will sustain the objection.

"Mr. Van Kirk: May I have an exception, your Honor?

"The Court: It may be noted.

"Q. But you expected this testimony here to help you out?

"A. Yes, sir.

"Q. You expect consideration?

"A. Yes, sir."

allowed because it would "demonstrate the bias of the witness by showing that he expected an extremely favorable sentence in exchange for his testimony" against the defendant. By limiting the witness' testimony, the defendant argues that "the prosecution was permitted to leave with the jury the false impression that its star witness had no more expectation of a payoff for his damning testimony than a mere vague hope for 'consideration,'" and that the defendant's right to confront witnesses against him had thereby been abridged.[3] We do not agree.

"The right of an accused effectively to cross-examine an adverse witness is embodied in the confrontation clause of the sixth amendment. *State v. Gaynor*, 182 Conn. 501, 508, 438 A.2d 749 (1980); see also *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L.Ed.2d 347 (1974); *Douglas v. Alabama*, 380 U.S. 415, 85 S. Ct. 1074, 13 L.Ed.2d 934 (1965). Cross-examination regarding motive, interest, bias and prejudice is a matter of right and may not be unduly restricted. *State v. Milum*, 197 Conn. 602, 609, 500 A.2d 559 (1985); *State v. Privitera*, 1 Conn. App. 709, 711-12, 476 A.2d 605 (1984)." *State v. Cox*, 7 Conn. App. 377, 383-84, 509 A.2d 36 (1986). " 'The general rule is that restrictions on the scope of cross-examination are within the sound discretion of the trial judge . . . but this discretion comes into play only after the defendant has been permitted

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[3] Although the defendant has cited, as the bases for his claim, both the sixth amendment to the constitution of the United States and article first, § 8, of the constitution of Connecticut, he offers no separate analysis of the Connecticut constitution as a basis for disparate treatment between them. We see no reason to undertake such an analysis. See *State v. Braxton*, 196 Conn. 685, 688 n.2, 495 A.2d 273 (1985); *State v. Cosby*, 6 Conn. App. 164, 166 n.1, 504 A.2d 1071 (1986).

cross-examination sufficient to satisfy the sixth amendment."' (Citations omitted.) *State v. Castro*, 196 Conn. 421, 424, 493 A.2d 223 (1985); *State v. Gaynor*, [supra]." *State v. Jones*, 205 Conn. 638, 670, 534 A.2d 1199 (1987). Our courts, therefore, undertake a bipartite analysis when reviewing claims of undue restriction on the scope of cross-examination, ascertaining first whether the constitutional standard has been met, and if so, then whether the trial court abused its discretion by restricting the scope of the cross-examination thereafter. *State v. Milum*, supra; *State v. Gaynor*, supra, 508; *State v. Cox*, supra, 384; *State v. Heinz*, 3 Conn. App. 80, 85-86, 485 A.2d 1321 (1984).

From such an analysis of the record before us, we conclude that the defendant has not been denied his right to confront the witnesses against him. First, the constitutional standard has been met. "The confrontation clause of the sixth amendment requires that the defendant be accorded some irreducible minimum of cross-examination into matters affecting the reliability and credibility of the state's witnesses." *State v. Ortiz*, 198 Conn. 220, 224, 502 A.2d 400 (1985). "The defendant's right to confrontation is preserved, if, through cross-examination, defense counsel is 'permitted to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.'" *State v. Jones*, supra, 669, quoting *Davis v. Alaska*, supra, 318; see *State v. Weidenhof*, 205 Conn. 262, 270, 533 A.2d 545 (1987). the defendant here had a sufficient opportunity to cross-examine the witness and thereby attempt to convey to the jury the basis for

any bias or prejudice the witness may have had while testifying on behalf of the state.[4]

Second, the trial court did not abuse its discretion when it limited the cross-examination of Colon concerning his expectation of a reduced sentence, and whether he had been promised a certain sentence by the state. The defendant argues that, since Colon's testimony was "devastating" to him, the jury was entitled to hear all evidence which might have suggested bias or prejudice on the part of the witness. We find this claim unavailing.

The defendant has cited *Hoover v. Maryland*, 714 F.2d 301 (4th Cir. 1983), to support his argument that Colon should have been allowed to testify as to what he believed he was entitled to receive in the way of a reduced sentence. While it is true that cases in which the

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[4] The defendant's cross-examination of the witness evoked details concerning the witness' prior record and included numerous questions regarding the particular sale of cocaine before the jury. Additionally, the jury had been informed that the witness had pleaded guilty to a charge involving the narcotics transaction for which the defendant was being tried, as well as to a charge for another sale of narcotics, and to violation of probation, and that the expected the state to treat him favorably, when he was later sentenced, for his testimony. From this evidence, the jury could infer that at least one of the witness' motives for testifying against the defendant was to receive a reduced sentence. It was the function of the jury to weigh the witness' credibility and the reliability of his testimony once it was established that he expected some consideration for his testimony on behalf of the prosecution. See *State v. Hart*, 198 Conn. 424, 427, 503 A.2d 588 (1986). The witness actually testified that the state had not offered him "any particular specific sentence," and that he had not made any deal with the state for his testimony.

defendant is denied sufficient opportunity to impeach a "key" government witness deserve a more rigorous review than cases not involving such witnesses; *State v. Gaynor*, supra, 509 n.7; a fair reading of that case leads us to agree with the dissenting opinion of Circuit Judge Hall, who concluded that the majority's reliance on *Davis v. Alaska*, supra, was misplaced, that the jury had "abundant evidence of [the witness'] possible bias and motive" for testifying against the defendant, and that "the only question in [that] case [was] whether the trial court cut off cross-examination too quickly, a matter in which the judge has wide discretion." *Hoover v. Maryland*, supra, 308 (Hall, J., dissenting).

In order to establish an abuse of discretion, the defendant must show that the restrictions imposed upon the cross-examination were clearly prejudicial. *State v. Castro*, supra, 426. "Once it is established that the trial court's ruling on the scope of cross-examination is not constitutionally defective, this court will apply '[e]very reasonable presumption . . . in favor of the correctness of the court's ruling in determining whether there has been an abuse of discretion.' *State v. Briggs*, 179 Conn. 328, 333, 426 A.2d 298 (1979), cert. denied, 447 U.S. 912, 100 S. Ct. 3000, 64 L.Ed.2d 862 (1980)." *State v. Castro*, supra. Where it is clear, as in this case, that the jury had been presented with testimony indicating that the defendant had a strong expectation that the state would offer him a reduced sentence in exchange for his testimony, this court will not hold that the trial judge abused his discretion by disallowing questions asking how much of a reduction the witness expected for testifying. The jurors were left with adequate information from which they could assess the

reliability of the witness' testimony. The additional questions going to the extent of sentence reduction would have served merely as cumulative evidence on that point.[5]

II

The defendant next claims that the trial court erred when it denied cross-examination of Fernandez concerning his allegedly mistaken identification, through a photographic display, of another person in a drug sale entirely unrelated to this case. We find that this claim is not reviewable because the defendant failed to preserve it as grounds for appeal by taking an exception to the judge's evidentiary ruling. Practice Book § 288. In fact, the defendant agreed with the ruling. See *Crowder v. Zion Baptist Church, Inc.*, 143 Conn. 90, 97-98, 119 A.2d 736 (1956). In addition, the defendant does not seek review under *State v. Evans*, 165 Conn. 61, 327 A.2d 576 (1973); see *State v. Lizotte*, 200 Conn. 734, 742A, 517 A.2d 610 (1986); *State v. Miller*, 186 Conn. 654, 672, 443 A.2d 906 (1982). Nor does he claim that the ruling constituted plain error. Practice Book § 4185. We, therefore, decline to address the merits of this claim.

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[5] We note that this case is significantly unlike *State v. Ortiz*, 198 Conn. 220, 502 A.2d 400 (1985), where the defendant was entirely prohibited from cross-examining a key prosecution witness concerning pending criminal charges against him. In that case it was held that the defendant's constitutional right of confrontation was abridged even though the Supreme Court was "convinced that the state's evidence, even without the testimony of [the key witness], would have been sufficient to sustain a finding of guilt beyond a reasonable doubt. . . ." *Id.*, 225.

III

The final issue raised in this appeal concerns the admissibility, on direct examination of the defendant, of his prior criminal record. The defendant argues that he should have been allowed to testify that his record consisted only of a misdemeanor conviction in order to rebut the "bad man" evidence against him, and the prosecution's use of his police "mug shots" for identification. We disagree.[6]

At trial, the defendant claimed the testimony of his misdemeanor conviction was admissible because the "mug shots" placed in evidence by the prosecution earlier in the case, depicting front and side views of the defendant with similar photographs of seven other male persons in an array, might cause the jury to speculate about the origin of the photographs, and that it was "asking too much of the jury not to draw . . . conclusions that in fact he does have some kind of clandestine past he is hiding." The court sustained the state's objection that the testimony was immaterial, since the defendant's record did not "bear on whether or not he is guilty of the offense charged." Showing the jury that the defendant "only" had a prior misdemeanor conviction, which the

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[6] In his brief, the defendant has referenced several instances where, he alleges, the prosecution presented testimonial evidence that he now claims was "to the general effect that the defendant was of poor character, was dangerous, had criminal propensities, and was known to the police as a criminal." Since such testimony was not objected to; Practice Book § 288; we will not review this claim.

defendant attempted to do, is not "good character" evidence which a defendant has the right to introduce when he takes the stand. See C. Tait & J. LaPlante, Connecticut Evidence (2d Ed.) § 8.3.4, p. 238. Such evidence "must pertain to the character trait involved in the crime charged, not general good character." *Id.; State v. Martin*, 170 Conn. 161, 163, 365 A.2d 104 (1976).

Although mug shots for identification of the defendant may not be used indiscriminately; see *State v. Marshall*, 3 Conn. App. 126, 131-32, 485 A.2d 930 (1985);[7] a careful reading of the transcript in this case convinces us that the prosecution minimized any suggestiveness of the photographs when they were offered in evidence. During a motion to suppress the mug shots before trial began, the prosecutor alerted the defense counsel that he intended to offer the photographs in evidence and described, in detail, those procedures he would use to mask any prejudicial information contained on the photographs, which he subsequently followed. The defendant did not object to these procedures during trial. The trial judge cautioned the jurors not to remove the coverings from the face of the photographs when they were offered as full exhibits. The mug shots were offered to show the

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[7] This state has long allowed the use of mug shots to prove the identity of the defendant during trial if it is relevant and material and if its probative value outweighs its prejudicial tendency. *State v. Peary*, 176 Conn. 170, 175, 405 A.2d 626 (1978), cert. denied, 441 U.S. 966, 99 S. Ct. 2417, 60 L.Ed.2d 1072 (1979); *State v. Crowe*, 174 Conn. 129, 131, 384 A.2d 340 (1977).

jury the procedure Fernandez used to identify the defendant as the person from whom he purchased the cocaine; they had a clear probative value and it cannot be claimed the trial court abused its discretion by allowing the photographs into evidence.

The defendant's concern, however, is not with the admissibility of the mug shots, but with any possible spillover effect that might have prejudiced the jury if they became aware that the photographs were mug shots taken by police when the defendant was arrested for his past crime. The defendant incorrectly attempts to characterize such possible spillover effect as bad character evidence that the state introduced against him. "The State may not, in its case-in-chief, offer evidence of the accused's character as to a certain trait to prove that he acted in accordance therewith, viz., that he had a propensity to so act and that he therefore committed the crime charged." C. Tait & J. LaPlante, Connecticut Evidence § 8.3.1, p. 232. The photo array including the defendant's pictures was introduced solely for the purpose of establishing the identity of the defendant as the seller of the cocaine. Furthermore, the precautions taken at trial here minimized any prejudice which might have arisen out of the introduction into evidence of the photographs and establishes that the state did not intend to indicate to the jury that the defendant had a criminal character which tended to implicate him in this offense.

There is no error.

In this opinion the other judges concurred.

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-88-1052

State of Connecticut

v.

Wilfredo Maisonet

ORDER ON PETITION
FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (16 Conn. App. 89) it is hereby ordered that said petition be, and the same hereby is denied.

BY THE COURT,

/s/ Cynthia M. Gworek
Assistant Clerk-Appellate

Dated: October 14, 1988

Notice to: 10/14/88
Clerk, Superior Court, New Haven, CR7-94311
Clerk, Appellate Court

John R. Williams
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John R. Williams in support of petition – *Leah Hawley, Deputy Assistant State's Attorney* in opposition.

88-972 (2)

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No. 88-9712

In The

Supreme Court Of The United States

OCTOBER TERM, 1988

WILFREDO MAISONET,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF CONNECTICUT

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QUESTION PRESENTED

DID THE CONNECTICUT COURTS VIOLATE DAVIS V. ALASKA, 415 U.S. 308 (1974) BY PROHIBITING A DEFENDANT FROM CROSS-EXAMINING A KEY PROSECUTION WITNESS CONCERNING WHETHER HE EXPECTED TO RECEIVE A SPECIFIC REDUCTION IN HIS SENTENCE AS PAYMENT FOR HIS TESTIMONY?

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State v. Maisonet, 209 Conn. at 16 . 3

OPINIONS BELOW

The opinion of the Connecticut Appellate Court is reported at 16 Conn. App. 89 (1988) as is found in petitioner's appendix at A1-A12. The order of the Connecticut Supreme Court denying petitioner's petition for certification is reported at 209 Conn. 816 (1988) and is found in petitioner's appendix at B1.

STATEMENT OF THE CASE

On February 1, 1985, Trooper Julio Fernandez, a trooper with the Connecticut state police statewide narcotics task force, entered a market in Meriden, Connecticut, owned by the petitioner, and purchased one-half gram of cocaine from Luiz Colon and the petitioner. The petitioner and Colon[1] were arrested and charged with the crimes in connection with the sale.

At the petitioner's trial, Colon

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[1] Prior to the petitioner's trial, Colon plead guilty to selling narcotics in connection with the transaction involved in this case, as well as to a charge involving another narcotics transaction, and to a violation of probation. At the time of the petitioner's trial, Colon had not yet been sentenced on these charges.

testified for the state regarding the drug transaction.[2]

On direct examination, Colon testified that he had pleaded guilty to the crime for which the defendant was being tried as well as several other crimes, including a violation of probation. Colon further testified that he was incarcerated awaiting sentencing and that, although his cooperation with the State would be made known to the sentencing judge, there was no recommendation as to any particular sentence and no indication as to what sentence would be imposed. On cross-examination, the defendant elicited from Colon that he was facing a total possible sentence of thirty-five years and that although no

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[2] The transcript of Colon's testimony is reproduced in Appendix A.

deals have been made he expected his testimony to help him out. The defendant was not permitted to ask Colon whether "there was ever a time when [Colon was] offered any particular sentence" and what Colon thought the best for him would be.

On appeal, the Connecticut Appellate Court held that the defendant "had a sufficient opportunity to cross-examine the witness and thereby attempt to convey to the jury the basis for any bias or prejudice the witness may have had while testifying on behalf of the state." State v. Maisonet, 16 Conn. App. at 95.

The Connecticut Supreme Court denied the petitioner's petition for certification. State v. Maisonet, 209 Conn. at 16.

The petitioner now petitions for a writ of certiorari to review the issue of whether "the Connecticut Courts violated Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974) by prohibiting a defendant from cross-examining whether he expected to receive a specific reduction in his sentence as payment for his testimony?"

REASON FOR DENIAL OF THE WRIT

I. THE PETITIONER'S CLAIM IS CONTROLLED BY ESTABLISHED PRECEDENT OF THIS COURT

The petitioner's claim is premised on the assumption that this Court's opinion in Davis v. Alaska, 415, U.S. 308, 94 S.Ct. 1105 (1974) mandates that the defendant be given unlimited right to cross-examine a witness regarding possible motive or bias. The respondent submits that this premise is erroneous,

thus providing an inadequate basis for the writ of certiorari.

In Davis v. Alaska, 415 U.S. 308, 315-16 this Court stated that "[t]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." An important function of the right of cross-examination is the exposure of a witness' motivation in testifying. However, as this Court has expressly held, the Confrontation Clause of the Sixth Amendment does not prevent "a trial judge from imposing [limits] on defense counsel's inquiry into the potential bias of a prosecution witness." Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 1435 (1986). Rather, "the Confrontation Clause guarantees an opportunity for effective

cross-examination, not cross-examination that is effective in whatever way, and to whatever extent the defense might wish." Delaware v. Van Arsdall, supra quoting Delaware v. Fensterer, 474 U.S. 15, 106 S.Ct. 292, 295 (1985)(per curiam)(emphasis is original). Thus, a trial judge retains wide discretion to impose reasonable limits on such cross-examination. Delaware v. Van Arsdall, supra. The defendant's confrontation right is satisfied if, on cross-examination, defense counsel is "permitted to expose to the jury the facts from which jurors as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." Davis v. Alaska, 415 at 318.

In the present case the constitutional standard was satisfied and the Connecticut Appellate Court properly found no error in the trial court's ruling. The jury had been fully apprised that Colon was awaiting sentencing for several crimes including the one for which the defendant was being tried. The defendant was given sufficient opportunity to cross-examine Colon to show bias, interest and motivation. Colon testified numerous times that although he had not received any promises regarding a possible sentence, he did expect leniency in exchange for his testimony. The inquiries regarding whether Colon had ever been promised a specific sentence and his opinion as to what the best for his was, were both cumulative and collateral. Because the

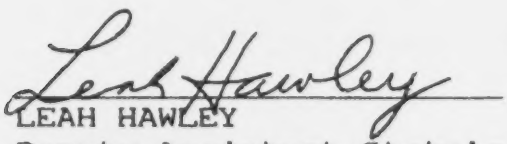
essential point, that Colon was hoping for leniency, had been effectively placed before the jury, it cannot be said that the defendant was prevented from exposing to the jury facts from which jurors could appropriately draw inferences relating to Colon's reliability or from making a record from which he could argue why Colon might be biased. See, Davis v. Alaska, 415 U.S. at 318. Therefore, the limitation imposed on cross-examination both conformed to the decisions of this Court and violated no constitutional right, and consequently, the petitioner's claim is meritless.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted.

THE RESPONDENT
STATE OF CONNECTICUT

BY: 

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No. 88-9712

In The
Supreme Court Of The United States

OCTOBER TERM, 1988

WILFREDO MAISONET,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

APPENDIX

APPENDIX A

(Discussion held off the record.)

MR. VANKIRK: Objection is withdrawn.

Q Mr. Colon, I believe I indicated, had you engaged in this type of transactions on prior occasions?

A And those occasions were involved with the defendant, Mr. Maisonet?

A Yes, sir.

Q And, in fact, you had an ongoing arrangement with Mr. Maisonet that you would be present during these deals, is that correct?

A Yes, sir.

Q Mr. Colon, you're presently residing at the Whalley Avenue Jail, are you not?

A Yes, sir.

Q In fact, Mr. Colon, you were arrested and charged with the sale to that undercover police officer that you have just described?

A Yes, sir.

Q Have you entered a plea on that charge?

A Yes, sir.

Q What was that plea? What did you plead?

A Guilty.

Q In fact, there was an additional count involving another narcotic transaction that you also pled guilty to, is that not right?

A Yes.

Q And at the time you entered those pleas, there was also a period of probation suspended on your -- on a previous conviction, is that right?

A Yes, sir.

Q Mr. Colon, have you been sentenced on any of those incidents?

A Not yet.

Q Any of those guilty pleas?

A Not yet.

Q And Mr. Colon, at this point the understanding you have is that you have entered pleas to those counts and there is no recommendation for any particular sentence by the State is that correct?

A Yes, sir.

Q And the judge hasn't indicated to you what he intends to impose, is that correct?

A Yes, sir.

Q In fact, Mr. Colon the situation is at this point you have entered guilty pleas, the fact that you

have cooperated with the State will be made known to the sentencing judge and the judge is then free to impose whatever sentence he feels fair, is that right?

A Yes, sir.

MR. HADDEN; If you can just have a moment, your Honor.

That's all I have, your Honor.

THE COURT: It will be necessary then that we take a recess at this point.

(Whereupon, the Court stood in recess.)

(Whereupon, the jury entered the courtroom.)

THE COURT: Stipulate, gentlemen?

MR. HADDEN: Yes, your Honor.

MR. VANKIRK: Yes, your Honor.

THE COURT: You may proceed.

CROSS EXAMINATION BY MR. VANKIRK:

Q Mr. Colon, how are you this morning?

A Fine.

Q Tell me again how this went down, this event on February 2 -- Excuse me, February 1, 1985. Who did what, I wasn't listening.

A I went walking in the store for Mr. Maisonet. Mr. Maisonet went into the store with the other guy, I don't know the guy.

Q Okay.

A He tell me this guy want to buy some stuff, cocaine. So he tell me how much you going to charge. I say fifty dollars.

Q Who told you how much you are

going to charge?

A Maisonet. He ask me that.

Q Okay.

Q Have you discussed your testimony with anyone today, today's testimony?

A Yes, sir.

Q And who did you discuss it with?

A Talk to my lawyer. I think that's the better way to do.

Q Excuse me?

A I talked to my lawyer because I want to try to do the best for me.

Q For yourself, okay.

A Yes, sir.

Q How about the prosecutor, did you talk to the prosecutor?

A Yes, sir.

Q Did you talk to any police

officers?

A No, sir.

Q Now, speaking of doing the best for yourself, you have a number of cases, or you did until you pled guilty, a number of cases pending, did you not?

A Yes, sir.

Q And one of those was a violation of probation, in Waterbury.

A In Waterbury.

Q We will go on. You also have a sale of narcotics, another case other than this one, sale of narcotics case pending, is that right?

A Yes, sir.

Q And you had this case pending?

A Yes, sir.

Q Was the sale of narcotics for the assault in the second degree--excuse me.

A Yes.

Q Was the probation for the assault in the second degree in Waterbury?

A Yes, that was self-defense.

Q That was self-defense?

A Yes, sir.

Q But you pled guilty to it?

A Yes.

Q And that was some time around June of '84, five years suspended, five years probation?

A Yes, sir.

Q Just want to make sure I have the right one. Also, you were arrested on December 18, 1985, for sale of cocaine?

A Be arrested for that?

Q Yes.

A December?

Q If I am reading this properly. Maybe it's incorrect. When were you arrested?

A Not this one?

Q No, the other one.

A I spent time in Cheshire, one year in Cheshire.

Q That was for the weapon in the motor vehicle, wasn't it?

A Yes, sir.

Q Did some time in Cheshire. When were you arrested for the other sale of cocaine?

MR. HADDEN: Well, your Honor, I don't think the date of his arrest is relevant. I am objecting.

MR. VANKIRK: I am maybe belaboring the point.

THE COURT: I am going to

allow the answer. Go ahead.

A I spent my time in Cheshire about in November. I went to Cheshire. I went in Cheshire for the weapon in motor vehicle. So he put me in possession of narcotics. He give me one year for that. I been in Cheshire, lock up in Cheshire. When he went to Cheshire in November he tell me I got two more cases, two more charges.

Q Who is he?

A He went to Meriden Court, to Cheshire to pick me up in jail.

Q Well, you were in Cheshire and you got served with two more warrants, is that what you said?

A Yes, sir.

Q They were both for the sale of narcotics?

A Yes, sir.

Q One of which was this case and one of which was another case?

A Yes, sir.

Q And you pled guilty to both of those?

A Yes.

Q And have you pled guilty to the violation of probation?

A Yes, sir.

Q Are you aware that you owed five years on the violation of probation?

A Yes, sir.

Q I mean, once you agree to a violation you could do five years?

A Yes, sir.

Q Did you know or are you aware that the maximum penalty for possession or sale of narcotics is 15 years under this statute?

A Yes, sir.

Q And you had two of those counts?

A Yes, sir.

Q So you have a total possible pending sentence against you right now of 35 years?

A Yes, sir.

Q Now, you made a deal with them of no deal, is that what you are saying?

A No deals.

Q You are just sitting there hoping somebody will cut you a break?

A Yes, sir.

Q Was there ever a time when you offered any particular specific sentence?

A No, sir.

MR. HADDEN: I will object to that.

THE COURT: Sustained.

MR. VANKIRK: Well, the grounds for the objection weren't stated.

MR. HADDEN: Clearly not relevant, your Honor, to anything he had testified to as to what he has pled guilty to and what the arrangement is with the Court and anything that was discussed prior to that time if totally ir-relevant.

MR. VANKIRK: Well, perhaps maybe I could do it in a little different way that would make it seem more relevant. I will rephrase the question.

Q What do you expect from this?

A The best for me.

Q The best for you. What do you think the best for you is?

MR. HADDEN: I object. What he perceives the best he can get, I don't know whether that has any relevance to this man's testimony.

THE COURT: Well, I will sustain the objection.

MR. VANKIRK: May I have an exception, your Honor?

THE COURT: It may be noted.

Q But you expected this testimony here to help you out?

A Yes, sir.

Q You expect consideration?

A Yes, sir.

Q Now, you were pretty good

friends with Mr. Maisonet, weren't you?

A Yes, sir.

Q And for quite a long time?

A I would say a year, three months.

Q A year and three months?

A Yes.

Q And he let you drive his car?

A Yes, sir.

Q Did he let you live in his house from time to time?

A Yes, sir.

Q And he gave you a job at the store?

A Yes, sir.

Q Did he put up bail for you from time to time?

A One time.

Q Was there anytime when he refused to put up questions, your Honor.

REDIRECT EXAMINATION BY MR HADDEN:

Q Mr. Colon, the understanding you have with the Court is that you will testify truthfully in this proceeding, is that right?

A Yes.

Q And you're hopeful that that will be helpful to you?

A Yes, sir.

Q But you have no idea as far as whether it will be helpful and to what extent?

A Yes.

Q And you did have an attorney who represented you on this case, correct?

A Yes, sir.

Q And you indicated you had spoken to him regarding your testimony in this case?

A Yes, sir.

Q And you also indicated you spoke with me about your testimony in this case?

A Yes, sir.

Q Now, did either myself or your defense counsel tell you how to testify, what to say here today?

A No, sir.

Q So your testimony today regarding the events of February the 1st, 1985, that is your best recollection of T. at 112-114, 118-123, 130.